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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

STEPHEN E. WEIGAND,

Plaintiff,

vs.

MATTHEW CHEUNG, an individual;
and PATENAUE & FELIX A
PROFESSIONAL CORPORATION, a
California corporation,

Defendants.

Case No.: 2:14-CV-278-SAB

PLAINTIFF'S MOTION FOR
AWARD OF ATTORNEY FEES AND
COSTS

7/13/2015 @ 6:30 PM
WITHOUT ORAL ARGUMENT

I. Motion for Attorney's Fees and Costs

Plaintiff Stephen Weigand moves the Court for reasonable attorney's fees and costs. This Motion is based on the supporting Memorandum herein, including the legal authorities cited, the supporting declarations, all documents related to this

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1 Motion, all documents in the Court's file in this action, and any other items the
2 Court deems appropriate.

3 II. Background and Procedural History

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5 On August 2, 2013, Plaintiff was served by Defendants with an unfiled
6 summons and complaint in the Spokane County Superior Court. Plaintiff appeared
7 in the action through his attorneys. Despite his appearance in the case, Defendants
8 moved for and were granted a default judgment, without any notice to the Plaintiff.
9 Despite correspondence by both the Plaintiff and his attorney, the Defendants
10 refused to vacate the improper default. Plaintiff suffered emotional distress, as
11 well as damage to his credit, resulting from the judgment. Plaintiff was forced to
12 file a motion in the Spokane County Superior Court to vacate the void judgment.
13 On April 25, 2014, the Spokane County Superior Court agreed that the judgment
14 was void and vacated the illegal judgment. After being confronted with the
15 Plaintiff's motion for summary judgment, the Defendants dismissed the Superior
16 Court lawsuit with prejudice.
17

18 On August 21, 2014, Plaintiff filed his Complaint against Defendants
19 Matthew Cheung and Patenaude & Felix for violations of the Fair Debt Collection
20 Practices Act (FDCPA). Defendants filed their answer, denying that they violated
21 the FDCPA and asserting that Defendant Cheung is not a debt collector. On
22

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1 November 25, 2014, the Defendants filed a motion to dismiss, which was denied
2 by this Court on February 4, 2015. On March 26, 2015, the Defendants made an
3 offer of judgment that included reasonable attorney's fees in an amount to be
4 determined by this Court. ECF No. 20-1. Plaintiff accepted the offer and this
5 Motion follows.
6

7 III. Statement of Facts 8

9 Plaintiff herein is represented by Kirk D. Miller of Kirk D. Miller, P.S and
10 Brian Cameron of Cameron Sutherland, PLLC.

11 Mr. Miller has expended a total of 43.1 compensable hours on behalf of
12 Plaintiff. Mr. Miller's paralegal, Rachel Elston, has expended a total of 10.9
13 compensable hours on behalf of Plaintiff. An itemized billing statement is attached
14 to the supporting declaration of Mr. Miller, filed herewith. ECF No. 25. The
15 hourly rate for the services provided by Mr. Miller is three hundred dollars
16 (\$300.00) per hour. The total lodestar calculation for the services of Mr. Miller in
17 this matter is twelve thousand nine hundred thirty dollars ($\$12,930.00 = 43.1 \text{ hours}$
18 $\times \$300.00$). *Id.* The total lodestar calculation for the services of Mr. Miller's
19 paralegal in this matter is one thousand three hundred sixty-two dollars and fifty
20 cents ($\$1,362.50 = 10.9 \text{ hours} \times \125.00). *Id.* Kirk D. Miller, P.S., also incurred
21 costs and litigation expenses of six hundred eighty-nine dollars and fifty cents
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1 (\$689.50) in prosecution of this matter. *Id.* Kirk D. Miller, P.S., incurred total
2 reasonable time and costs in the amount of fourteen thousand nine hundred eighty-
3 two dollars (\$14,982.00) on this matter as of June 1, 2015. ECF No. 25-1
4

5 Mr. Cameron has expended a total of 24.3 compensable hours on behalf of
6 Plaintiff. Cameron's Legal Assistant, Christina Nelson, has expended a total of 0.8
7 compensable hours on behalf of Plaintiff. An itemized billing statement is attached
8 to the supporting declaration of Mr. Cameron, filed herewith. ECF No. 26. The
9 hourly rate for the services provided by Mr. Cameron is two hundred dollars
10 (\$200.00) per hour. The total lodestar calculation for the services of Mr. Cameron
11 in this matter is four thousand eight hundred and sixty dollars ($\$4,860.00 = 24.3$
12 hours x \$200.00). *Id.* The total lodestar calculation for the services of Mr.
13 Cameron's Legal Assistant in this matter is seventy two dollars ($\$72.00 = 0.8$ hours
14 x \$90.00). *Id.* Cameron Sutherland, PLLC, also incurred costs and litigation
15 expenses of sixty four dollars and forty cents (\$64.40) in prosecution of this matter.
16
17 *Id.* Cameron Sutherland, PLLC, incurred total reasonable time and costs in the
18 amount of four thousand nine hundred ninety-six dollars and forty cents
19 (\$4,996.40) on this matter as of June 9, 2015. ECF No. 26-1.
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1 Plaintiff is the prevailing party in this litigation and is entitled to costs
2 and reasonable attorney's fees in the amount of nineteen thousand nine hundred
3 seventy-eight dollars and forty cents (\$19,978.40). ECF Nos. 25, 26.

4
5 Counsel have carefully reviewed the time records to ensure that only
6 productive and necessary efforts are included in this fee petition. Furthermore,
7 Washington Law permits recovery of all time reasonably expended in the
8 litigation, whether or not each time entry contributed to the successful claim, so
9 long as the time is related to the ultimate result achieved. *Chuong Van Pham v.*
10 *City of Seattle, Seattle City Light*, 159 Wash. 2d 527, 548, 151 P.3d 976, 986
11 (2007).

12 13 IV. Argument

14 15 A. Plaintiff Was Successful in this Action

16
17 The Fair Debt Collection Practices Act requires the payment of costs and
18 reasonable attorney's fees to a successful consumer:

19 [a]ny debt collector who fails to comply with any provision of
20 this subchapter . . . is liable to such person in an amount equal
21 to the sum of--[actual damages] [statutory damages] and (3) in
22 the case of any successful action to enforce the foregoing
23 liability, the costs of the action, together with a reasonable
24 attorney's fee as determined by the court.

25 15 U.S.C. § 1692k(a)(3)

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1 Under the FDCPA, the prevailing plaintiff is entitled to a reasonable
2 attorney's fee as determined by the Court. *Id.* "The FDCPA's statutory language
3 makes an award of fees mandatory." *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d
4 973, 978 (9th Cir. 2008) (citation omitted). Having prevailed on Default
5 Judgment, and Judgment having been entered, Plaintiff is unquestionably the
6 prevailing party in this litigation. As the prevailing party, Plaintiff is entitled to a
7 mandatory award of costs and reasonable attorney's fees. *Id.*

10 Given the structure of the FDCPA, attorney's fees should not be construed
11 as a special or discretionary remedy; rather, the Act mandates an award of
12 attorney's fees as a means of fulfilling Congress' intent that the Act should be
13 enforced by debtors acting as private attorneys-general. *Graziano v. Harrison*, 950
14 F.2d 107, 113 (3d Cir. 1991). *See also, DeJesus v. Banco Popular de Puerto Rico*,
15 918 F.2d 232, 235 (1st Cir. 1990).

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B. Plaintiff's Attorneys are to be Awarded Fees
Pursuant to the Lodestar Formula

The U.S. Supreme Court has explained the calculation for an award of attorney's fees:

The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. The calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services.

Hensley v. Eckerhart, 461 U.S. 424, 433; 103 S. Ct. 1933, 1939; 76 L. Ed. 2d 40 (1983); *Camacho v. Bridgeport Financial, Inc.*, 523 F.3d 973, 978 (9th Cir. 2008). *See also, Thorpe v. Collection Info. Bureau*, 963 F. Supp. 1172, 1174 (S.D. Fla. 1996).

Although this decision, and others cited hereinafter, arise in the context of the Civil Rights Attorney's Fees Award Act, 42 U.S.C. § 1988, these criteria are equally applicable here. "The standards set forth in this opinion are generally applicable in all cases in which Congress has authorized an award of fees to a 'prevailing party.'" *Hensley v. Eckerhart*, 461 U.S. at 433, n. 7. "We have stated in the past that fee-shifting statutes' similar language is 'a strong indication that they are to be interpreted alike.'" *Independent Federation of Flight Attendants v. Zipes*, 491 U.S. 754; 109 S. Ct. 2732, 2735 n.2.; 105 L. Ed. 2d 639 (1989), *quoting Northcross v. Memphis Bd. Of Education*, 412 U.S. 427, 428; 93 S. Ct. 2201, 2202; 37 L. Ed. 2d 48 (1973). The multiplication of the reasonable number of hours

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1 expended times the reasonable hourly rate is referred to as the “lodestar.” *Friend*
2 *v. Kolodziejczak*, 72 F.3d 1386, 1389 (9th Cir. 1995).

3 Mr. Miller’s compensable time in this litigation totaled 43.1 hours. ECF No.
4 25. This amount of time is reasonable. *Id.* The hourly rate of \$300.00 charged by
5 Mr. Miller is appropriate for an attorney of his experience in this type of litigation.
6 *Id.* Ms. Elston’s compensable time in this litigation totaled 10.9 hours. ECF No.
7 25. This amount of time is reasonable. *Id.* The hourly rate of \$125.00 charged by
8 Ms. Elston is appropriate for a paralegal of her experience. *Id.* Kirk D. Miller,
9 P.S., also incurred \$689.50 in costs and litigation expenses in this matter. *Id.*

10 Mr. Cameron’s compensable time in this litigation totaled 24.3 hours. ECF
11 No. 26. This amount of time is reasonable. *Id.* The hourly rate of \$200.00
12 charged by Mr. Cameron is appropriate for an attorney of his experience in this
13 type of litigation. *Id.* Ms. Nelson’s compensable time in this litigation totaled 0.8
14 hours. *Id.* This amount of time is reasonable. *Id.* The hourly rate of \$90.00
15 charged by Ms. Nelson is appropriate for a Legal Assistant of her experience. *Id.*
16 Cameron Sutherland, PLLC, also incurred \$64.40 in costs and litigation expenses
17 in this matter. *Id.*

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C. The Lodestar May Not be Reduced Due
to the Amount of the Judgment

Plaintiff seeks an award of his attorney fees based upon the lodestar formula.

1. Prevailing Market Rates are the Standard

The U.S. Supreme Court stated “[t]he statute and legislative history establish that ‘reasonable fees’ under section 1988 are to be calculated according to the prevailing market rates in the relevant community, regardless of whether plaintiff is represented by private or non-profit counsel.” *Blum v. Stenson*, 465 U.S. 886, 895, 104 S. Ct. 1541, 1547 (1984) (footnote omitted). *See also, Camacho* at 979-81. Mr. Miller seeks an hourly rate of \$300.00. ECF No. 25.

In order to encourage able counsel to undertake FDCPA cases, as Congress intended, it is necessary that counsel be awarded fees commensurate with those which they could obtain by taking other types of cases ... Paying counsel in FDCPA cases at rates lower than those they can obtain in the marketplace is inconsistent with the congressional desire to enforce the FDCPA through private actions, and therefore misapplies the law.

Tolentino v. Friedman, 46 F.3d 645, 652-653 (7th Cir. 1995).

The respective hourly rates of Mr. Miller and his paralegal, Ms. Elston, and Mr. Cameron and his Legal Assistant, Mrs. Nelson, are reasonable in light of their respective experience and skill and the prevailing market rates in the Spokane

County legal community. ECF Nos. 25, 26. It is also the rate they charge their

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1 fee-paying clients. ECF Nos. 25, 26. Moreover, the rates are appropriate in light
 2 of what is charged in the marketplace for attorneys and paralegals with comparable
 3 skills and experience. *Id.*

4
 5 2. The Award of Attorneys' Fees is not Limited by the Amount of Damages

6 As long as the consumer is successful, i.e., recovers more than nominal
 7 damages, the consumer should be awarded attorney fees pursuant to a lodestar
 8 calculation. "In the absence of any indication that Congress intended to adopt a
 9 strict rule that attorney's fees under section 1988 be proportionate to damages
 10 recovered, we decline to adopt such a rule ourselves." *City of Riverside v. Rivera*,
 11 477 U.S. 561, 581; 106 S. Ct. 2686, 2697; 91 L. Ed. 2d 446 (1986)(footnote
 12 omitted). *Also see: Quaration v. Tiffany & Co.*, 166 F.3d 422 (2d Cir. 1999);
 13 *Zagorski v. Midwest Billing Services, Inc.*, 128 F.3d 1164 (7th Cir. 1997).

16 The benefits to the public as a whole resulting from lawsuits which
 17 encourage compliance with statutory provisions are more important than relatively
 18 small damage awards. *See e.g., Heritage Pacific Financial, LLC v. Monroy*, 215
 19 Cal. App. 4th 972, 1007 (Cal. App. 1st Dist. 2013) ("This lawsuit may spur
 20 [Defendant] to cease unlawful conduct against other consumers, which is an
 21 important consideration.") Indeed, when a provision for counsel fees is included in
 22 a regulatory act, it is a recognition that enforcement of the statute would be
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1 unlikely if an individual had to pay his or her own attorney's fees. The Supreme
2 Court quoted Senator Tunney's remarks in the Congressional Record: "If the
3 citizen does not have the resources, his day in court is denied him; the
4 congressional policy which he seeks to assert and vindicate goes unvindicated; and
5 the entire nation, not just the individual citizen, suffers." *City of Riverside*, 477
6 U.S. at 575, 106 S. Ct. at 2694 (citation omitted).

8 The Third Circuit amplified this thought, stating:

9
10 Congress provided fee shifting to enhance enforcement of
11 important civil rights, consumer-protection, and environmental
12 policies. By providing competitive rates we assure that
13 attorneys will take such cases, and hence increase the likelihood
14 that the congressional policy of redressing public interest
15 claims will be vindicated.

16 *Student Public Interest Research Group v. AT&T Bell Laboratories*, 842 F.2d
17 1436, 1449 (3d Cir. 1988).

18 "Congress has relied on such plaintiffs to act as private attorneys general."
19 *Id.* at 1450 n.13. *Also see: Graziano v. Harrison*, 950 F.2d at 113. The amount of
20 damages awarded often has borne no relation to the amount of attorney's fees
21 granted. "[A]ttorney's fees awarded by district courts have 'frequently outrun the
22 economic benefits ultimately obtained by successful litigants.'" *Evans v. Jeff D.*,
23 475 U.S. 717, 735; 106 S. Ct. 1531, 1541; 89 L. Ed. 2d 747 (1986) (citation
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omitted). Upon finding a statutory violation and damages, the attorney's fees award should be made in the lodestar amount. *Johnson v. Eaton*, 80 F.3d 148 (5th Cir. 1996).

For example, in *Cruz v. Int'l Collection Corp.*, 2010 U.S. Dist. LEXIS 69688 (N.D. Cal. June 8, 2010) (J. Fogel), the Court awarded plaintiffs' counsel \$22,656.17 in attorney's fees and \$2,854.81 in costs where the plaintiff recovered \$1,000 in statutory damages. In *Bretana v. Int'l Collection Corp.*, 2010 U.S. Dist. LEXIS 68872 (N.D. Cal. June 8, 2010) (J. Fogel), the Court awarded \$50,542.17 in attorneys' fees and \$5,268.51 in costs where the plaintiff recovered \$2,500 in damages. In *Armstrong v. The Rose Law Firm, P.A.*, 2002 U.S. Dist. LEXIS 16867 (D. Minn. Sept. 4, 2002), the district court approved the award of \$43,180 in attorney's fees where the plaintiff recovered \$1,000 in statutory damages. The Southern District of Florida affirmed the bankruptcy court's award of attorney's fees of \$29,037.50 where the plaintiff recovered FDCPA statutory damages of only \$1,000. *In re Martinez*, 266 B.R. 523, 544 (Bankr. S.D. Fla. 2001), *aff'd* 271 B.R. 696 (S.D. Fla. 2001). In *Perez v. Perkiss*, 742 F. Supp. 883 (D. Del. 1990), the district court awarded \$10,110 in attorney's fees where the plaintiff's recovery was only \$1,200. The Seventh Circuit reversed a district court's denial of attorney's fees even though the plaintiffs only recovered \$100 (\$50 each) as FDCPA statutory

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1 damages and remanded for determination of an award of attorney's fees. *Zagorski*
2 *v. Midwest Billing Services, Inc.*, 128 F.3d 1164. Of course, the amount of
3 reasonable attorney's fees awarded pursuant to the FDCPA is left to the sound
4 discretion of the judge. *Schimmel v. Slaughter*, 975 F.Supp. 1481, 1484 (M.D. Ga.
5 1997); *See also, Danow v. Law Office of David E. Borack, P.A.*, 367 Fed. Appx. 22
6 (11th Cir. Fla. 2010) (Although the consumer recovered the same \$1,000 damages
7 contained in the Offer of Judgment, the final Judgment obtained was not
8 confidential as required by the Offer, and the consumer was entitled to the award
9 of attorney's fees in the amount of \$62,895.00 plus costs of \$715.60).

12 The Ninth Circuit Court of Appeals recently found that the court did not
13 abuse its discretion in awarding \$697,000 in attorney fees and costs to a plaintiff
14 who recovered \$27,000 in damages under the California Fair Employment and
15 Housing Act. *Muniz v. UPS*, 738 F.3d 214, 227 (9th Cir. Cal. 2013) ("A trial court
16 does not under California law abuse its discretion by simply awarding fees in an
17 amount higher, even very much higher, than the damage awarded, where
18 successful litigation causes conduct which [a statute] was enacted to deter to be
19 exposed and corrected.")

22 Likewise, under Washington Law, when a party seeks an award of fees
23 disproportionate to a damages award, courts readily grant the request when
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1 documentation supports a reasonable expenditure of time on tasks performed by
2 counsel. *Target Nat. Bank v. Higgins*, 180 Wash. App. 165, 321 P.3d 1215 (2014)
3 (citing: *Fiore v. PPG Indus., Inc.*, 169 Wn. App. 325, 279 P.3d 972 (2012);
4 *Taliesen Corp.v. Razore Land Co.*, 135 Wn. App. 106, 144 Po3d 1185 (2006);
5 *Mayer v. City of Seattle*, 102 Wn. App. 66, 10 Po3d 408 (2000); *Dash Point Vill.*
6 *Assocs. v. Exxon Corp.*, 86 Wn. App. 596, 937 P.2d 1148 (1997)).

8
9 D. Plaintiff's Attorney is Entitled to an
Award of Costs and Litigation Expenses

10 Plaintiff has requested the award of costs and litigation expenses in addition
11 to an award of attorneys' fees. FDCPA "plaintiffs are also entitled to an award of
12 costs representing out-of-pocket litigation expenses ... includ[ing] costs incurred in
13 travel (airfare, car rental, hotels and food, gasoline and the like), telephone, postage
14 and photocopying." *Ilick v. Miller*, 68 F. Supp. 2d 1169, 1181 (D. Nev. 1999).

17 The FDCPA grants the successful plaintiff "the costs of the action." 15
18 U.S.C. §1692k(a)(3). Long distance telephone and faxing expenses, as well as
19 copying and postage have been awarded as costs. *Sousa v. Miguel*, 32 F.3d 1370,
20 1374 (9th Cir. 1994). Recoverable costs include travel, photocopies, lodging,
21 postage, telephone calls, and computerized research. *Libertad v. Sanchez*, 134 F.
22 Supp. 2d 218, 236 (D.P.R. 2001). Costs may be recovered as provided for by

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1 statute as well as 28 U.S.C. § 1920. *See Lathem v. Department of Children &*
2 *Youth Servs.*, 172 F.3d 786, 794 (11th Cir. 1999).

3 1. Legal Assistants and Interns

4 Fees for legal work performed by legal assistants and law clerks may be
5 included in attorney's fees. *Absher Construction Company v. Kent School District*,
6 79 Wn. App. 841, 905 P.2d 1229, 917 P.2d 1086 (1995). The Washington
7 Supreme Court has held that “reasonable attorney fees” includes reasonably,
8 necessary expenses of litigation. *Panorama Vill. Condo. Owners Ass'n Bd. of*
9 *Dirs. v. Allstate Ins. Co.*, 144 Wn.2d 130, 142, 26 P.3d 910 (2001); *Louisiana-Pac.*
10 *Corp. v. Asarco, Inc.*, 131 Wn.2d 587, 605, 934 P.2d 685 (1997) (Sanders, J.,
11 concurring). The United States Supreme Court has approved of an award of fees
12 for legal assistance noting that, “[b]y encouraging the use of lower cost paralegals
13 rather than attorneys wherever possible, permitting market-rate billing of paralegal
14 hours encourages cost-effective delivery of legal services.” *Missouri v. Jenkins*,
15 491 U.S. 274, 288, 109 S.Ct. 2463, 105 L.Ed.2d 229 (1989) (internal quotation
16 marks omitted).

17 In *Absher*, the Court found that because non-lawyer personnel decrease the
18 expense of litigation, use of their services should not be discouraged. *Absher*, 79
19 Wn. App at 844. Excluding such services from an attorney fee award might act as
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1 a deterrent to providing cost-effective legal services. The services of a “qualified
2 legal assistant” may be included in an attorney fee award. *Id.*

3 V. Conclusion

4 Attorney fees and expenses should be awarded to Plaintiff in the amount of
5
6 nineteen thousand nine hundred seventy-eight dollars and forty cents (\$19,978.40).

7 DATED this 11th day of June, 2015.

8
9 *Kirk D. Miller P.S.*

10 /s Kirk D. Miller
11 Kirk D. Miller
12 WSBA # 40025
13 Attorney for the Plaintiff
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3	<i>Johnson v. Eaton</i> , 80 F.3d 148 (5th Cir. 1996).....	12
4	<i>Lathem v. Department of Children & Youth Servs.</i> , 172 F.3d 786, 794 (11th Cir.	
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CM/ECF CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of June, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

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